IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3069 OF 2004

IN

SUIT NO.3297 OF 1999

Antwerpse Diamant Bank n.v. ...Plaintiff.

vs.

M/s.Kamal & Company. ...Defendant.

Mr.B.B.Saraf i/b. Udawadia & Udeshi, for Plaintiff.

Mr.U.J.Makhija i/b. Bipin Joshi, for Defendant.

Mr.R.M.Agarwal, for Mr.A.M.Saraogi, Advocate- Noticee.

CORAM: D.K.DESHMUKH,J.

DATED: 13th October,2005

P.C.:-

1. This is a notice of motion taken out by the defendant for setting aside the ex-parte decree. It appears that in a summary suit , a Summons for Judgment was duly served on Lawyer appearing for the defendant but because of the mistake on the part of the Lawyer, reply

was not filed on behalf of the defendant and leave to defend the suit was not sought. As also the date on which the summons for judgment was heard, nobody was present on behalf of the defendant. In this situation, a decree came to be passed. The lawyer involved has filed an affidavit accepting his mistake. He has also undertaken to pay cost that may be awarded, to the plaintiff because of setting aside of ex-parte decree. In my opinion, since there is involvement of a lawyer and as the Lawyer has accepted his mistake, it will not be proper for me to go into any details. In this view of the matter therefore, the following order would meet the ends of justice:-

(i) Notice of Motion is granted in terms of prayer clause (a) and (b) subject to condition that the defendant would pay as and by way of cost of this Notice of Motion Rs.20,000/- to the plaintiff.

(ii) Mr.Agarwal, the learned Counsel appearing on behalf of the Lawyer involved in the matter has made statement before me that the amount of cost would be paid to the plaintiff within a period of one week from today.

Notice of Motion is disposed of.

Defendant to file affidavit of reply within a period of two weeks from today.

Office is directed to place the Summons for judgment for hearing before the Court in a week commencing on 21.11.2005.